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No. 94-1513

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

M. HAROLD EZZONE AND
PATRICIA L. LAROSA,

Petitioners

v.

WILLIS M. HANSEN, DENNIS B. HANSEN,
AND STATE BANK OF LAWLER,

Respondents.

On Petition for Writ of Certiorari
To the Supreme Court of Iowa

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents wholly disagree with the Petitioners' characterization of the questions presented. Distilled to essentials, the sole question presented by the Petition for Writ of Certiorari is the following:

Whether the Supreme Court of Iowa, upon Respondents' challenge to the sufficiency of evidence to support any award of punitive damages, violated the Due Process Clause of the Fourteenth Amendment by determining that the awards of punitive damages were excessive and granting Respondents a new trial unless Petitioners' accepted remittitur of the awards.

LIST OF PARTIES

Respondent State Bank of Lawler is a bank under charter from the State of Iowa. It is a subsidiary of Hansen Bancorporation and has no subsidiaries. The other parties are individuals.

TABLE OF AUTHORITIES

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Coster v. Crookham, 468 N.W.2d 802 (Iowa 1991)	3
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Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S.1 (1991)	2
Ryan v. Arneson, 422 N.W.2d 491 (Iowa 1988)	3
Spaur v. Owens-Corning Fiber Glass Corp., 510 N.W.2d 854 (Iowa 1994)	2

STATEMENT OF THE CASE

Through its decision in this case, the Supreme Court of Iowa joined the vast majority of other jurisdictions that allow remittitur of excessive punitive damages. Prior Iowa law is explained in Johnston v. Norfolk Southern Corp., 448 N.W.2d 486, 490 (Iowa 1989) (Schultz, J., concurring in part and dissenting in part). The remittitur rule allows a plaintiff to avoid a new trial by accepting the remitted award.

Contrary to the assertions and implications in Petitioners' Statement of the Case, Respondents made a posttrial challenge to the excessiveness of Petitioners' awards in the trial court. Respondents contended as follows:

> No reasonable relationship exists between the amounts of punitive damages and the conduct of Defendants on which the damages are predicated. Moreover, the evidence was insufficient to support any award of punitive damages. The award is excessive. (12/16/92 motions, p.6).

The issue was also fully argued in Respondents' posttrial brief. Petitioners admit that on appeal Respondents reiterated their challenge to the sufficiency of the evidence to support the punitive damage awards. The Supreme Court of Iowa specifically held, in accordance with precedent, that this challenge constituted a challenge both to the appropriateness and extensiveness of the punitive damages awards. (App. at 65-6).[1]

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1. "App." refers to Petitioners' appendix.

Even though Respondents believe Petitioners have misstated or misrepresented the facts and law in other respects in their Petition, Respondents believe those misstatements will not be material to this Court's consideration of Petitioners' palpably frivolous Petition for Writ of Certiorari.

SUMMARY OF THE ARGUMENT

The awards of punitive damages were determined to be excessive under rules long applicable in Iowa. The decision of the Supreme Court of Iowa merely offered Petitioners a choice between new trial of the case and acceptance of remittitur of punitive damages. Petitioners voluntarily elected to accept remittitur. Application of these rules is wholly consistent with and, indeed, dictated by the Due Process Clause.

ARGUMENT

In Spaur v. Owens-Corning Fiber Glass Corp., 510 N.W.2d 854, 866-68 (Iowa 1994), the Supreme Court of Iowa evaluated its method for reviewing punitive damage awards in light of this Court's holding in Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S.1 (1991). Among other determinations, the Iowa Court held that an Iowa appellate court "should determine if the defendant was afforded the two prior stages of scrutiny and then undertake the substantive review of the amount of the award." Id. at 867. Honda Motor Co. v. Oberg, ____ U.S. ____, 114 S. Ct. 2331 (1994) requires post-verdict scrutiny as a matter of Constitutional law. The Due Process Clause imposes a substantive limit on the size of punitive damage awards. Id., 114 S. Ct. at 2335. An award of punitive damages "pose[s] an acute danger of arbitrary deprivation of property." Id., 114 S. Ct. at 2340.

The Iowa Supreme Court, in response to Respondents' challenge to the punitive damage awards, merely carried out its common law and Constitutional responsibility to review the awards. The common law standard of review focuses upon a judicial examination of the relationship between the dollar amount awarded and the wrongful conduct of the offending party. See Ryan v. Arneson, 422 N.W.2d 491 (Iowa 1988). The Iowa Court believes that assessment of punitive damages calls "for the utmost discrimination because, by their very nature, they involve utilization of a rightful indignation which must not amount to passion or prejudice." Coster v. Crookham, 468 N.W.2d 802, 810-11 (Iowa 1991).

The only thing novel about is case is that the Iowa Court adopted a new remedy permitting a plaintiff to accept remittitur as an alternative to new trial. Prior to Ezzone, the plaintiff was in an "all or nothing" position and had no choice but to try at least the issue of punitive damages anew upon an appellate finding of excessiveness. See Johnson v. Norfolk Southern Corp., 448 N.W.2d 486 (Iowa 1989).

Petitioners today seek certiorari from this Court on the basis that their due process rights under the Fourteenth Amendment have been violated by the action of the Supreme Court of Iowa in giving them a method of avoiding new trial upon the appellate court's determination that the punitive damages awards were excessive. Because this new option in Iowa works in their favor and plainly falls well within the parameters of due process, the Petition for Certiorari is frivolous and should be denied.

Respectfully submitted,

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